

# 立法會 *Legislative Council*

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## **Report of the Bills Committee on Bankruptcy (Amendment) Bill 2015**

### **Purpose**

This paper reports on the deliberations of the Bills Committee on the Bankruptcy (Amendment) Bill 2015 ("the Bills Committee").

### **Background**

#### The present regime for discharge from bankruptcy

2. The existing Bankruptcy Ordinance ("BO") (Cap. 6) provides that a bankrupt will automatically be discharged from bankruptcy upon the expiry of the "relevant period"<sup>1</sup>, which runs for four years for first-time bankrupts or five years for repeat bankrupts. To protect the rights of creditors and to ensure that a bankrupt will continue to fulfil his/her obligation to co-operate with the trustee-in-bankruptcy ("TIB") under this automatic discharge regime, the "relevant period" may be suspended pursuant to the following mechanisms –

- (a) *Objection regime*: Under section 30A(3) of BO, a TIB or a creditor may apply to the court to object to the automatic discharge of the bankrupt on specified grounds set out in section 30A(4), e.g. the bankrupt's failure to co-operate in the administration of the bankrupt's estate, in which case the court may make an order to suspend the running of the "relevant period" for up to four years for first-time bankrupts or up to three years for repeat bankrupts; and

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<sup>1</sup> The term "relevant period" is defined in section 30A of the BO to refer to the time before a bankrupt's discharge from bankruptcy.

(b) *Abscondee regime*<sup>2</sup>: Section 30A(10) of BO provides for automatic suspension of the "relevant period" for a bankrupt under three specified circumstances, viz. —

- (i) a bankrupt has left Hong Kong before the commencement of bankruptcy (section 30A(10)(a));
- (ii) a bankrupt has left Hong Kong after the commencement of bankruptcy without notifying the TIB of his or her itinerary and contact means (section 30A(10)(b)(i)); or
- (iii) a bankrupt has left Hong Kong after the commencement of bankruptcy and failed to return to Hong Kong as required by the TIB (section 30A(10)(b)(ii)),

in which case the "relevant period" will only commence or resume running (as the case may be) when the bankrupt has returned to Hong Kong and notified the TIB of his or her return.

#### Court of Final Appeal's ruling

3. In an earlier court case<sup>3</sup>, section 30A(10)(b)(i) of BO<sup>4</sup> was ruled unconstitutional by the Court of Final Appeal ("CFA") and as a result has become inoperative. The CFA considered that the restraint imposed by that provision on the bankrupt's right to travel went beyond what was necessary for the protection of the rights of creditors because —

- (a) the sanction operated irrespective of the reason for the bankrupt's failure to notify the TIB of his/her departure from Hong Kong;
- (b) the sanction applied indiscriminately to all situations, irrespective of, for instance, the stage of the bankruptcy already reached and whether it had occasioned any prejudice to bankruptcy administration; and

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<sup>2</sup> The abscondee regime was introduced under the Bankruptcy (Amendment) Bill 1996 which was passed at the Council meeting of 18 December 1996 and enacted as the Bankruptcy (Amendment) Ordinance 1996. The relevant provisions came into operation with effect from 1 April 1998.

<sup>3</sup> *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing v Chan Wing Hing* (2006) 9 HKCFAR 545.

<sup>4</sup> Section 30A(10)(b)(i) of the BO provides for the automatic suspension of the running of the "relevant period" for a bankrupt who has left Hong Kong after the commencement of bankruptcy without notifying the TIB of his/her itinerary and contact means.

- (c) there was no discretion vested in the court to disapply the sanction or mitigate the consequences.

### **The Bankruptcy (Amendment) Bill 2015**

4. The Bill was published in the Gazette on 30 April 2015 and received its First Reading at the Legislative Council meeting of 13 May 2015. The Bill amends the BO to replace the existing abscondee regime under section 30A(10) with new arrangements to address the constitutionality issues which have arisen from the present abscondee regime mentioned in paragraph 3 above.

5. Under the proposed new arrangements, there will no longer be an automatic suspension of the "relevant period" as in the abscondee regime. The court will be provided with discretionary power to determine, on application by a TIB on grounds that a bankrupt has failed to complete an "initial interview"<sup>5</sup> and thereby caused prejudice to the administration of the bankrupt's estate, whether the "relevant period" which counts towards the discharge from bankruptcy should be treated as not commencing to run until the bankrupt complies with the relevant terms specified by the court in a non-commencement order. The TIB must file a notice with the Registrar of the High Court within 14 days after a bankrupt has complied with the commencement term(s), and the "relevant period" will commence to run on the date on which the commencement term(s) are complied with. The Bill also provides for various measures to ensure fairness of the new arrangements, and transitional arrangements for pre-existing cases (i.e. those cases where the bankruptcy order is made before 1 November 2016, the proposed commencement of the Bill). The main provisions of the Bill are set out in **Appendix I**.

### **The Bills Committee**

6. At the House Committee meeting held on 15 May 2015, Members agreed to form a Bills Committee to study the Bill. Hon CHAN Kam-lam was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix II**. Relevant professional organizations have

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<sup>5</sup> A bankrupt has failed to complete the "initial interview" if he/she has failed to attend the "initial interview" with the TIB, or attended the "initial interview" but failed to provide at that interview all the information concerning his/her affairs, dealings and property as reasonably required by the TIB (Proposed section 30AB(1)).

been invited to give views on the Bill. The Bills Committee has held three meetings and received oral representations from three deputations at one of the meetings on 7 July 2015. A list of the organizations which have submitted views to the Bills Committee is in **Appendix III**.

### **Deliberations of the Bills Committee**

7. The Bills Committee has no objection to the provisions of the Bill. Members support in principle the replacement of the existing abscondee regime with the proposed new arrangements set out in paragraph 5 above to address the constitutionality issues relating to the automatic suspension of the "relevant period" under the existing abscondee regime, and to target a bankrupt's failure to complete the "initial interview". The deliberations of the Bills Committee are set out in the ensuing paragraphs.

#### Justifications for a new regime under the proposed sections 30AB and 30AC

8. The Bills Committee notes that section 26(2) of the BO currently provides for a general requirement for bankrupts to give certain information and to do acts and things in relation to his/her property as may be reasonably required by the TIB. Rule 150(2) and (3) of the Bankruptcy Rules (Cap. 6A) also provides that the TIB may hold interviews with the bankrupt for the purpose of investigating the bankrupt's affairs, and it shall be the duty of the bankrupt to attend these interviews at such times and places as the TIB may appoint. Furthermore, under the objection regime, a TIB may apply to the court to object to the bankrupt's discharge at the expiration of the "relevant period" pursuant to section 30A(3) of the BO on grounds specified under section 30A(4), including the bankrupt's unsatisfactory conduct and failure to co-operate.

9. In view of the above provisions, the Bills Committee has followed up on the concern raised by Caritas Family Crisis Line and Education Centre ("Caritas") about the justifications for introducing a new mechanism under proposed sections 30AB and 30AC instead of relying on the current objection regime and the existing provisions in the BO concerning a bankrupt's unsatisfactory conduct or failure to co-operate in the administration of a bankrupt's estate.

10. The Administration has explained that the "initial interview" is critical to the TIB's work in bankruptcy case administration, and a bankrupt's failure to complete the interview will likely cause prejudice to the administration of the bankrupt's estate as the TIB will not have sufficient information and documents at the outset to perform his/her duties properly. That is why the

"relevant period" which counts towards the discharge from bankruptcy should be treated as not commencing to run from the date of the bankruptcy order if a non-commencement order is made against the bankrupt. The Administration has highlighted that the proposed new arrangements are to replace the existing abscondee regime to, among other things, tackle the issue with "automatic" element of the suspension of the "relevant period" under the existing regime. The policy objective of the new arrangements is to target a bankrupt's failure to complete the "initial interview" in order to encourage the bankrupt to co-operate with the TIB at the outset so that the TIB will have sufficient information and documents to perform his or her duties properly. This policy objective however cannot be achieved through the current objection regime as it does not provide a sanction specifically targeting those bankrupts who fail to co-operate with the TIB at the outset which prejudices the commencement of administration of the bankrupt's estate. The Administration therefore considers it more appropriate to put in place a new mechanism that specifically targets a bankrupt's failure to complete the "initial interview" with a corresponding sanction (i.e. non-commencement of the "relevant period") which is commensurate with the prejudice caused to the administration of the bankrupt's estate, instead of relying on a general criminal sanction available under section 26(4) of the BO<sup>6</sup>.

11. Caritas has expressed concern whether the proposed new arrangements can deter a bankrupt from refusing to co-operate with the TIB or failing to comply with the relevant obligations under the BO after his/her completion of the "initial interview". In this connection, the Hong Kong Institute of Certified Public Accountants ("HKICPA") has suggested that a bankrupt's failure to attend or to co-operate in a subsequent interview should also constitute grounds for the TIB to apply for a non-commencement order under the new regime.

12. The Administration has explained that while the "initial interview" is critical to the TIB's work in bankruptcy case administration, subsequent interviews are typically for the TIB to inquire into specific aspects pertaining to bankruptcy administration and changes in the financial affairs of the bankrupt as well as further investigating into the bankrupt's affairs on a needs basis. In the event that a bankrupt fails to attend or co-operate with the TIB in subsequent interviews, the circumstances could be addressed pursuant to section 30A(3) and (4) of the BO under the existing objection regime in which case, the TIB may object to the bankrupt's discharge and seek a court

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<sup>6</sup> Pursuant to section 26(4) of the BO, a bankrupt may be guilty of contempt of court and be subject to punishment for, among other things, wilful failure to perform the duties imposed on the bankrupt under that section.

order to suspend the running of the "relevant period" such that the "relevant period" shall not exceed a total of eight years.

Meaning of "initial interview"

(Clause 5: Proposed sections 30AB and 30AC)

13. The Bills Committee notes that the term "initial interview" is not specifically defined in the Bill nor does it appear in the BO. Some members, including Hon Dennis KWOK, have sought clarification on whether an "initial interview" includes any subsequent interview adjourned, and whether a bankrupt's failure to attend any other interview session (adjourned from the "initial interview") would be caught under the proposed section 30AB(1)(b) of the Bill.

14. In view that the proposed new arrangements are intended to target a bankrupt's failure to attend a "face to face" interview, and an "initial interview" may need to be adjourned, the Hong Kong Bar Association ("HKBA") has requested the Administration to consider defining the term "initial interview" to (i) make it clear if an "initial interview" could be conducted via video/web conferencing, and (ii) include any subsequent interview adjourned from the first day of the "initial interview" appointed so as to avoid any argument as to whether a bankrupt's failure to attend an adjourned interview (having attended the first appointment) should be caught under the proposed section 30AB(1)(b). Sharing a similar view that an "initial interview" may not be a one-off event, HKICPA has suggested that the notion of "initial interview" should be expanded and defined to include adjourned and subsequent interviews (not necessarily have to be face-to-face) to be conducted within the first six months from the date of bankruptcy to follow up information or documentation that the bankrupt has provided or is unable to provide at the first meeting.

15. The Administration has advised that according to the proposed section 30AB(1)(a), a bankrupt is required to attend an "initial interview" on a day appointed by the TIB for the purpose of the administration of the bankrupt's estate, at which the bankrupt shall provide the TIB with information concerning his/her affairs, dealings and property as reasonably required by the TIB. An "initial interview" relates to the *first* meeting between the bankrupt and the TIB on a day appointed by the latter for the administration of the bankrupt's estate. The TIB cannot seek to extend the application of the new arrangements to the next meeting by adjourning the "initial interview" or by holding subsequent meetings. As such, a bankrupt's failure to attend any other interview session "adjourned" from the "initial interview" will not be caught under the proposed section 30AB(1)(b). This will minimize

uncertainties as to whether any subsequent meeting is a continual session of the "initial interview" or not and will avoid potential abuse by the TIB.

16. To address the concern of the Bills Committee and HKBA that the present drafting of the proposed section 30AB(1)(a) may not have expressly excluded the conduct of the "initial interview" by way of video/web conference, the Administration will introduce a Committee Stage amendment ("CSA") to add a new subsection under the proposed section 30AB to clarify that if the bankrupt is not physically present before the trustee at the initial interview, he/she has failed to attend that interview.

17. The Bills Committee has followed up on the concern raised by the Legal Adviser to the Bills Committee about whether the requirement of the bankrupt's physical presence at the "initial interview", (i.e. a bankrupt who is overseas would be required to return to Hong Kong to attend the interview) would impose an unreasonable restraint on the bankrupt's constitutional freedom to travel and be subject to challenge, in view of the CFA's ruling on 5 November 2015 in *Official Receiver v Zhi Charles formerly known as Chang Hyun Chi* (FACV 8/2015) that section 30A(10)(a) is unconstitutional. The Administration has advised that the main issue of contention over the existing abscondee regime was the "automatic" element of the suspension of the "relevant period". The proposed new arrangements are to replace the abscondee regime to, among other things, tackle the issue and address the constitutionality issues which have arisen from the present abscondee regime. Unlike the existing abscondee regime which has an automatic suspension mechanism, the proposed new arrangements will provide the court with discretion to decide whether to make a non-commencement order after taking into account all relevant facts and factors.

#### Giving of notice for "initial interview"

18. Under the proposed section 30AB(1)(b) of the Bill, a bankrupt's failure to complete an "initial interview" would be a ground on which the TIB may apply for a non-commencement order against a bankrupt. Given the serious consequences which may flow from a bankrupt's failure to complete the "initial interview", HKBA holds the view that there should be clear provisions setting out how and when the notice of the appointment of the "initial interview" should be served on the bankrupt and the particulars which should be included in the notice (e.g. a list of documents that a bankrupt should be required to bring to the interview).

19. The Administration has advised that given that the circumstances of individual cases may vary, it will not be appropriate to set out in the Bill a set of standard requirements on the timing and mode for the TIB to give notice of

the "initial interview" or to specify in the Bill an exhaustive list of the documents to be made available by the bankrupt at the "initial interview". Compared with specifying a fixed mode and time period for serving a notice, there will generally be more flexibility under the new arrangements for the TIB to appoint a day for holding the "initial interview" with the bankrupt. In order to ensure that the court can assess whether the TIB has taken proper steps to notify the bankrupt of the "initial interview", the proposed rule 89A(2)(b) of the Bankruptcy Rules requires the TIB to provide particulars of the steps taken for notifying the bankrupt of the time and place for the "initial interview". On the other hand, the proposed section 30AB(1)(b)(ii) has already specified that the information to be provided by the bankrupt at the "initial interview" must be about his/her affairs, dealings and property as reasonably required by the TIB. If the bankrupt considers that the TIB has not taken reasonable steps to notify him or her of the time and place for the "initial interview", or the TIB's requirement for information to be provided by the bankrupt at the "initial interview" is unreasonable, he/she may object to the granting of a non-commencement order. The court will have the discretion to decide whether to make a non-commencement order against a bankrupt under section 30AC(1) after taking into account all relevant facts and information.

#### Application for a non-commencement order

(Clause 5: Proposed section 30AB(2), (3), and (4))

20. Pursuant to the proposed section 30AB(2)(a), a TIB may, within 6 months after the date of the bankruptcy order against a bankrupt, apply for a non-commencement order against a bankrupt if the bankrupt has failed to complete the "initial interview" with the TIB such that the administration of the bankrupt's estate is prejudiced. Within the 6 months after the date of the bankruptcy order, the TIB may make an extension application to the court pursuant to proposed section 30AB(3) and (4)(a). On application of the TIB, the court may exercise discretion to specify a longer period for which the TIB may apply for a non-commencement order. Before the expiry of the extended period approved by the court, the TIB may apply for further extension pursuant to the proposed section 30AB(3) and (4)(b).

21. The Bills Committee has expressed concern whether the length of the non-commencement of the "relevant period" may be unduly prolonged and therefore cause unfairness to a bankrupt since there is no limit on the length of the non-commencement period which the court may order and the number of times that the TIB may apply for an extension. HKBA has also raised concerns about whether the new arrangements, whereby a non-commencement order (to the effect that the "relevant period", in its entirety, is treated as not commencing to run on the date of the bankruptcy order) as



opposed to a suspension order (to the effect that the "relevant period" should not continue to run) would cause unfairness to a bankrupt in certain circumstances, for example, where there is an inordinate delay in the application for a non-commencement order by the TIB. To minimize unfairness and/or prejudice which may be caused to the bankrupt, HKBA has suggested that the court be given the power to make an appropriate order after having regard to the situation of each case. For example, apart from a non-commencement order, the court should be at liberty to make a suspension order (so that the "relevant period" (already commenced) would stop running at a particular point in time) and also to specify the period for which the suspension order should take effect.

22. The Administration has reiterated that the policy objective of the new arrangements is to target a bankrupt's failure to complete the "initial interview". The proposed new arrangements are designed to deal with cases where the TIB cannot properly commence administration of the bankrupt's estate at the outset owing to the bankrupt's failure to complete the "initial interview". Against this background, it is considered appropriate that, in the case of the administration of the bankrupt's estate has been prejudiced, the "relevant period" which counts towards the discharge from bankruptcy should be treated as not commencing to run from the commencement of bankruptcy, viz. the date of the bankruptcy order. As such, setting a time limit on the length of the non-commencement order will defeat the purpose of the new arrangements, as the sanction against the bankrupt may be lifted without the bankrupt having taken the requisite actions for the TIB to commence the administration of the bankrupt's estate. That said, the court has full discretion to set the terms (such as provision of the requisite information to the TIB) for triggering the commencement of the "relevant period" under the proposed section 30AC(2) having regard to the specific circumstances of individual cases. On the TIB's filing of the notice after all the terms specified in the non-commencement order are complied with by the bankrupt, the "relevant period" is treated as commencing to run on the date stated in the notice under the proposed section 30AC.

23. In this connection, the HKICPA has suggested that the period of extension for making an application for a non-commencement order be subject to an overall limit of one year. The Administration has explained that the TIB is required to justify any extension application having regard to specific circumstances of the case, whereas the approval of the extension application will be at the full discretion of the court. The Administration does not consider it necessary or appropriate to impose an overall limit on the period of extension as it may fetter the discretion of the court.

24. The Bills Committee has sought elaboration on the conditions for the application for a non-commencement order on the ground that "the administration of the bankrupt's estate was prejudiced". The Administration has advised that it is the TIB's responsibility to justify the application for a non-commencement order and to satisfy the court that the bankrupt's failure to complete the "initial interview" has prejudiced the administration of the bankrupt's estate, having regard to the specific circumstances of individual cases. The court has full discretion to determine whether or not to make a non-commencement order having regard to all relevant facts and to the representations made by the TIB and the bankrupt concerned.

Measures to ensure fairness

(Clause 4: Proposed section 30A(4A))

Clause 5: Proposed section 30AC(1))

25. The Bills Committee has taken note of Caritas' concern on whether a trading bankrupt who, though with no intent to evade his/her obligations, has failed to keep proper books and accounts in the past due to oversight, or as a result of maladministration or fault (such as loss of documents) on the part of the TIB, will be sanctioned under the new regime. Some members have also expressed concern about fairness to the bankrupt in the case where a bankrupt, though willing to afford all co-operation to the TIB in the administration of the estate, has a justifiable reason for his/her absence from the appointed interview.

26. The Administration has pointed out that while the new arrangements will provide the TIB with a power to apply to the court for a non-commencement order and the fact of a bankrupt's failure to complete the "initial interview" would be a ground for the TIB to apply to the court for a non-commencement order against the bankrupt, it is not an automatic mechanism. The bankrupt's failure to attend the "initial interview" or to provide the necessary information at the "initial interview" is only a prerequisite for making the application and the TIB has to justify the application and show to the court in the application that such failure has caused prejudice to the administration of the bankrupt's estate. If the bankrupt, for whatever reasons, fails to attend the "initial interview", the TIB will still need to take into account whether the bankrupt has taken any mitigation measures, e.g. through attending another interview or submitting all documents and information on paper as well as the timing of submission and comprehensiveness of the information. It is not incumbent on the TIB to apply for a non-commencement order if he/she is satisfied that the prejudice has been sufficiently mitigated. Furthermore, the court has full discretion to decide whether to make a non-commencement order after taking into account all relevant facts and factors, including any representations made by the

bankrupt on why the non-commencement order should not be made.

27. According to the Administration, the following provisions have been provided in the Bill to ensure fairness to the bankrupt –

- (a) the bankrupt may contest the TIB's application for a non-commencement order with reference to the causes of his/her failure to complete the "initial interview" or any other relevant matters (Clause 5: Proposed section 30AC(1)(b), Clause 10: Proposed rule 89A(5));
- (b) the information to be provided by the bankrupt at the "initial interview" must be reasonably required by the TIB (Clause 5: Proposed section 30AB(1)(b)(ii));
- (c) if an application for a non-commencement order is made on the ground that the bankrupt has failed to attend the "initial interview", the TIB must, when making the application to the court, provide particulars of the steps that have been taken for notifying the bankrupt of the time and place for the "initial interview" (Clause 10: Proposed rule 89A(2)(b)); and
- (d) where the court has determined the TIB's application and, as a result, made a non-commencement order against a bankrupt or otherwise, the matters in respect of the bankrupt's failure to complete that "initial interview" as referred to in the application may not form the basis for any grounds for a subsequent objection to the discharge of the bankrupt (Clause 4: Proposed section 30A(4A)).

#### Transitional arrangements

(Clause 5: Proposed section 30A(10A))

28. The Bills Committee notes that while the Bill seeks to abolish the abscondee regime (i.e. proposed repeal of section 30A(10) of the BO by the Bill), the transitional provisions in the Bill have proposed that section 30A(10)(a)<sup>7</sup> and (b)(ii)<sup>8</sup> of the BO relating to the automatic suspension of the running of the "relevant period" for a bankrupt continues to apply to pre-

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<sup>7</sup> Section 30A(10)(a) provides for the automatic suspension of the commencement of the running of the "relevant period" for a bankrupt who has left Hong Kong before the commencement of bankruptcy and has not returned to Hong Kong.

<sup>8</sup> Section 30A(10)(b)(ii) provides for the automatic suspension of the running of the "relevant period" for a bankrupt who has left Hong Kong after the commencement of bankruptcy and failed to return to Hong Kong as required by the TIB.

existing cases. Pending the outcome of an appeal to the CFA in *Chang Hyun Chi v Official Receiver* [2015] 1 HKLRD 512 in which the Court of Appeal ("CA") ruled that section 30A(10)(a) of the BO is unconstitutional, some members enquired about the reasons for the proposed application of the repealed section to the pre-existing cases, the implications on the travel rights of those bankrupts against whom bankruptcy orders have been made before 1 November 2016 ("pre-existing bankrupts") and the administration of these cases should the CFA uphold the CA's ruling. In this connection, HKBA had raised a concern whether the transitional arrangement under the proposed section 30A(10A)<sup>9</sup> is appropriate, in view of the likelihood that the present section 30A(10)(a) is ruled to be unconstitutional by the CFA.

29. According to the Administration, the Bill has proposed that TIBs may apply to the court for a non-commencement order only in respect of a bankrupt whose bankruptcy order is made on or after the commencement date of the new arrangements. It is fair to do so as pre-existing bankrupts were unaware of the consequences of failing to complete the "initial interview" at the time when they became bankrupt. On the other hand, to safeguard the legitimate interests of creditors, it will be unfair to repeal the abscondee regime without saving its application to the pre-existing bankrupts.

30. The Administration has further explained that the transitional provisions aim to preserve what is still effective before the commencement of the new arrangements. The proposed section 30A(10A) provides for a standard transitional arrangement and has the effect that the suspension of the "relevant period" under the existing section 30A(10)(a) and section 30A(10)(b)(ii) of a pre-existing bankrupt will remain in place after the commencement of the new arrangements. The Administration has pointed out that despite the proposed section 30A(10A), if the CFA upheld the CA's ruling that section 30A(10)(a) was unconstitutional, the latter would automatically become inoperative. In other words, the "relevant period" for the pre-existing bankrupt concerned would be considered to have commenced running since the date of his/her bankruptcy order.

31. On 5 November 2015, the CFA ruled in *Official Receiver v Zhi Charles formerly known as Chang Hyun Chi* (FACV 8/2015) that section 30A(10)(a) is unconstitutional. In light of the CFA's ruling, the Administration will introduce a CSA to remove the reference to section 30A(10)(a) in the proposed section 30A(10A).

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<sup>9</sup> Section 30A(10A): Despite the repeal of subsection (10) by the Bankruptcy (Amendment) Ordinance 2015, subsection (10)(a) and (b)(ii) as in force immediately before 1 November 2016 continues to apply to a bankrupt against whom a bankruptcy order has been made before that date.

### Commencement of the Bill

32. The Bills Committee has enquired about the rationale for setting 1 November 2016 as the commencement date of the proposed new regime. The Administration has explained that on the assumption that the Bill will be enacted around end-2015, the commencement date of 1 November 2016 is proposed taking into account that the Official Receiver's Office ("ORO") needs around nine to ten months' lead time to carry out the necessary preparation work for the implementation of the new arrangements, including adjustments to the computer system of the ORO. In response to some members' concern about possible delay in the preparation of the computer system, the Administration has advised that the initial preparation work is underway. In the event that the computer systems are not ready by 1 November 2016, the cases could be processed manually in the interim.

### Publicity and public education

33. The Bills Committee shares Caritas' view that public education (especially for bankrupts) on the importance of completing the "initial interview" should be conducted upon the implementation of the new arrangements. Hon NG Leung-sing has enquired whether the Administration has any plan to publicize the new arrangements and educate the public on risk and debt management in view of the recent volatile performance of the stock market and the potential interest rate hike and asset price adjustment.

34. According to the Administration, the Investor Education Centre and some non-governmental organizations ("NGOs"), in collaboration with the ORO, have been organizing activities to educate the public on debt management. Seminars on bankruptcy have been organized for secondary school students. The ORO will provide NGOs with relevant information where necessary to facilitate their education activities on debt management. The Administration has undertaken that appropriate public education will be conducted before the commencement of the new arrangements. The ORO will update its website and publications, such as *The Simple Guide on Bankruptcy*, to provide information on the new arrangements and the relevant requirements to members of the public. The ORO will also conduct briefings for private insolvency practitioners and issue notices and guidelines to them.

### Fee

(Clause 15)

35. The Bills Committee notes that a TIB shall pay a fee of \$528 to the court for each application for a non-commencement order for recovery of the

costs incurred in the provision of court services. The Bills Committee has raised no objection.

### **Committee Stage amendments**

36. Apart from the CSAs mentioned in paragraphs 16 and 31 above, the Administration will also introduce a number of CSAs to improve the clarity of the Bill in light of the comments of the Legal Adviser to the Bills Committee. The Bills Committee will not propose any amendment to the Bill.

### **Resumption of Second Reading debate on the Bill**

37. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 16 December 2015.

### **Consultation with the House Committee**

38. The Bills Committee reported its deliberations to the House Committee on 4 December 2015.

Council Business Division 1  
Legislative Council Secretariat  
11 December 2015

### Main provisions of the Bankruptcy (Amendment) Bill 2015

The Bankruptcy (Amendment) Bill 2015 contains 15 clauses. The main provisions are as follows –

- (a) **Clause 1** sets out the short title of the Bill and specifies 1 November 2016 as its commencement date;
- (b) **Clause 4** amends section 30A of the Bankruptcy Ordinance (Cap. 6) ("BO") to deal with the relationship between the grounds for objection to discharge and the proposed new arrangements, as well as the transitional arrangements for pre-existing cases;
- (c) **Clause 5** amends BO by adding two new provisions (sections 30AB and 30AC) which concern the application for, and the effect of, a non-commencement order as well as the filing of a notice relating to the commencement of the running of the "relevant period";
- (d) **Clause 6** amends section 30B of BO to provide that the court is not to make an order for early discharge of a bankrupt if the "relevant period" has not commenced to run pursuant to a non-commencement order;
- (e) **Clause 10** amends the Bankruptcy Rules (Cap. 6 sub. leg. A) to provide for two new rules on the relevant court procedures;
- (f) **Clause 13** amends the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) to provide for two new forms (Forms 82A and 82B), viz. the non-commencement order and the notice of commencement; and
- (g) **Clause 15** amends the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to provide for the fee payable to the court on an application for a non-commencement order.

[Source : Paragraph 11 of the Legislative Council Brief on the Bankruptcy (Amendment) Bill 2015 issued by the Financial Services and the Treasury Bureau on 28 April 2015 (File Ref: IB&W/3/1/1/1C(2015)).]

**Bills Committee on Bankruptcy (Amendment) Bill 2015**

**Membership List**

**Chairman** Hon CHAN Kam-lam, SBS, JP

**Members** Hon Albert HO Chun-yan  
Hon WONG Ting-kwong, SBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Paul TSE Wai-chun, JP  
Hon NG Leung-sing, SBS, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon TANG Ka-piu, JP

(Total : 10 members)

**Clerk** Ms Annette LAM

**Legal Adviser** Ms Clara TAM



**Bills Committee on Bankruptcy (Amendment) Bill 2015**

**List of organizations which have submitted views to the Bills Committee**

1. The Law Society of Hong Kong
2. Caritas Family Crisis Line and Education Centre
3. Hong Kong Institute of Certified Public Accountants
- \* 4. The Hong Kong Association of Banks
- \* 5. The DTC Association
- \* 6. Consumer Council
- \* 7. Hong Kong Bar Association

\* submitted written views only